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Supreme Court, U.S.
FILED
JAN 26 1942
CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 901

GEORGE PITTS,

v.

FRED G. DRUMMOND,

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA AND BRIEF IN SUPPORT THEREOF

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STATUTES CITED

Act of April 18, 1912 (37 Stat. L. 86, 88), "An Act supplementary to and amendatory of an act entitled 'An act for the division of lands and funds of the Osage Nation of Indians in Oklahoma' approved June 28, 1906, and for other purposes."

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Act of February 27, 1926, (43 Stat. L. 1008, 1010), "An act to amend the Act of Congress of March 3, 1921, entitled 'An Act to amend section 3 of the Act of Congress of June 28, 1906, entitled "An Act of Congress for the division of the lands and funds of the Osage Indians in Oklahoma, and for other purposes." ' "

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No.

GEORGE PITTS, *Petitioner,*

v.

FRED G. DRUMMOND, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA

To the Honorables, Harlan F. Stone, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Your petitioner, George Pitts, most respectfully represents and shows to you as follows:

History of the Case.

The respondent, Fred G. Drummond, instituted this action in the District Court of Osage County, Oklahoma, on October 24, 1939, for a money judgment on a note and to foreclose a mortgage executed by the petitioner on July 12, 1937. (R. 3-12).

To this your petitioner answered, alleging that he was a full-blood member of the Osage Tribe of Indians, and that he was subject to the laws of the United States of America relating to Osage Indians, and that he and his property were

under the control and supervision of the Secretary of the Interior of the United States. He further alleged that he was granted a certificate of competency by the Secretary of the Interior on July 11, 1910, and that his certificate of competency was revoked by the Secretary on June 24, 1938.

As to the lands sought to be foreclosed, your petitioner alleged that he had inherited all of the lands from his wife, who was at all times a full-blood, restricted member of the Osage Tribe of Indians; that she died intestate on the 24th day of May, 1937; that on the 9th day of September, 1938, the County Court of Osage County made and entered its order finding and determining the heirs of Mamie Fletcher Pitts, and setting over to your petitioner his interest in the mortgaged lands.

Your petitioner further alleged that on April 18, 1912, the President of the United States approved an act of Congress relating to the Osage Indians, Section 7 of which provides as follows, to-wit: (37 Stat. L. 86, 88)

> "That the lands allotted to members of the Osage Tribe shall not in any manner whatsoever be encumbered, taken, or sold to secure or satisfy any debt or obligation contracted or incurred prior to the issuance of a certificate of competency, or removal of restrictions on alienation; nor shall the lands or funds of Osage tribal members be subject to any claim against the same arising prior to grant of a certificate of competency. That no lands or moneys inherited from Osage allottees shall be subject to or be taken or sold to secure the payment of any indebtedness incurred by such heir prior to the time such lands and moneys are turned over to such

> heirs: *Provided, however,* That inherited moneys shall be liable for funeral expenses and expenses of last illness of deceased Osage allottees, to be paid under order of the county court of Osage County, State of Oklahoma: *Provided further,* That nothing herein shall be construed so as to exempt any such property from liability for taxes."

and thereafter, and on February 27, 1925, the President of the United States approved an act of Congress, Section 3 of which provides as follows, to-wit: (43 Stat. L. 1008, 1010)

> "Land devised to members of the Osage Tribe of one-half or more Indian blood or who do not have certificates of competency, under wills approved by the Secretary of the Interior, and lands inherited by such Indians, shall be inalienable unless such lands be conveyed with the approval of the Secretary of the Interior. Property of Osage Indians not having certificates of competency purchased as hereinbefore set forth shall not be subject to the lien of any debt, claim, or judgment except taxes, or be subject to alienation, without the approval of the Secretary of the Interior."

Your petitioner further alleged that by reason of the fact that the mortgage executed by him had never received the approval of the Secretary of the Interior, and by reason of the acts of Congress above referred to, he was without power, right or authority to in any way alienate or encumber the lands mortgaged, prior to the date of the decree of the County Court determining the heirs and distributing the estate, and further alleged that the mortgage was invalid and did not convey, assign or set over to the plaintiff any right,

title, interest, estate or equity in any of the lands described in the petition.

Your petitioner therefore prayed that the respondent take nothing, and, as his cross-petition prayed that the court find and detemine that the mortgage was null and void, and that it did not constitute a cloud upon the title of your petitioner. (R. 15).

To this answer the respondent herein filed a reply, admitting all of the facts but denying all of the conclusions of law. (R. 20)

The case was tried upon the admission of the note and mortgage, over the objections of the respondent and on the admissions contained in the plaintiff's reply. The court found in favor of the respondent and against your petitioner, and rendered judgment against your petitioner for the sum of $2500.00 with interest at ten percent from July 12, 1938; $275.00 attorney fees and for foreclosure of the mortgage. (R. 23).

From this adverse judgment an appeal was taken to the Supreme Court of the State of Oklahoma, which court, on the 6th day of May, 1941, handed down its decision affirming the judgment of the trial court and holding that the mortgage was valid. (R. 39). On the 6th day of June, 1941, and within the time allowed by law and rules of said Supreme Court, your petitioner filed his petition for re-hearing of said cause (R. 43) which was, by said court, on the 28th day

of October, 1941, overruled and denied. (R. 44) The mandate was issued by the Supreme Court to the District Court of Osage County, (R. 46).

Reasons for Granting Petition for Writ of Certiorari.

A.

This case involves the construction of acts of Congress of the United States relating to Osage Indians. It presents the broad question of whether lands inherited from a restricted member of the Osage Tribe by a member holding a certificate of competency are subject to alienation by the heir, without the approval of the Secretary of the Interior of the United States, and prior to the time such lands have been "turned over to him" by the state court. The opinion of the Supreme Court of the State has not been published, but it appears on pages 39-43 of the transcript.

B.

The decision of the Supreme Court of Oklahoma is directly contrary to and in conflict with a reported decision of the United States District Court for the Northern District of Oklahoma in the case of *United States vs. Johnson*, 29 Fed. Supp. 300, and it therefore presents a conflict of decisions interpreting a federal statute involving Osage Indians.

C.

Because of the conflict in the decisions of the United States District Court for the Northern District of Oklahoma and the Supreme Court of the State of Oklahoma, and because of the fact that title to land is involved, and because

the construction of federal statutes is involved, your petitioner respectfully states that this court should accept jurisdiction to review this case in order that a correct and proper decision of the federal statutes involved may be arrived at, and in order that the confusion concerning the title to lands owned and inherited by members of the Osage Tribe may be avoided and the statutes of such lands finally and authoritatively determined.

D.

A certified transcript of the record, certified by the Clerk of the Supreme Court of Oklahoma on the 13 day of December, 1941, (R. 46), is transmitted, and your petitioner, George Pitts, respectfully requests that same be filed as an exhibit to this petition for certiorari.

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this court to the Supreme Court of Oklahoma, commanding said court to certify to this court a full and complete transcript of the record and of the proceedings in said Supreme Court of Oklahoma had in the case numbered and entitled on its docket, No. 29,859, George Pitts, Plaintiff in Error, vs. Fred G. Drummond, Defendant in Error, to the end that this cause may be reviewed and determined by this court, as provided for by the statutes of the United States, and that the judgment herein of said Supreme Court of the State of Oklahoma be reversed by this court, and for such further relief as this court may deem proper.

Dated at Pawhuska, Osage County, Oklahoma, this 19 day of January, 1942.

RALPH A. BARNEY,
Counsel for Petitioner.
Pawhuska, Oklahoma.